

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

THE NEMOURS FOUNDATION,	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	JURY TRIAL DEMANDED
	)	
UNITEDHEALTHCARE OF THE MID-	)	
ATLANTIC, INC.,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff The Nemours Foundation (“Nemours”), by its attorneys, Pepper Hamilton LLP, brings this action against Defendant UnitedHealthcare of the Mid-Atlantic, Inc. (“United Maryland”), as follows:

**Nature of the Action**

1. This is an action for breach of contract brought by Nemours, one of the nation’s leading pediatric health care providers, against United Maryland, a company that offers coverage to beneficiaries of Maryland’s Medical Assistance and CHIP programs.

2. Nemours owns and operates, inter alia, the Alfred I. duPont Hospital for Children in Wilmington, Delaware (the “Hospital”), and Nemours duPont Pediatrics (“Nemours Pediatrics”), a pediatric physician practice that operates in Delaware, Pennsylvania, and New Jersey.

3. Nemours and United Maryland are parties to a Settlement Agreement wherein United Maryland agreed to reimburse Nemours at certain specified percentages of billed charges for services rendered to United Maryland members.

4. In breach of the Agreement, United Maryland has failed repeatedly to pay Nemours in full for services provided to United Maryland members in accordance with the terms of the Agreement. Nemours accordingly brings the instant action for breach of contract.

5. Nemours is entitled to damages in excess of \$400,000.00 (four hundred thousand dollars), exclusive of interest and costs.

### **Parties**

6. Nemours is a not-for-profit corporation incorporated under the laws of the State of Florida, with its principal place of business located at 10140 Centurion Boulevard North, Jacksonville, Florida 32256.

a. Nemours is one of the largest charitable institutions devoted to pediatric patient care, teaching and research in the United States.

b. For more than sixty years, Nemours has been dedicated to providing treatment and curative services to acutely and chronically ill children.

c. Through the Hospital, children's clinics, primary care pediatricians and specialists, Nemours provides a comprehensive range of specialized pediatric services, including hospital services, many of which are not generally available at community hospitals or general acute care hospitals.

7. United Maryland d/b/a UnitedHealthcare Community Plan is a Maryland corporation with its principal place of business located at 4 Taft Court, Rockville, Maryland 20850. Upon information and belief, United Maryland is a party to a contract with Maryland's Department of Health and Mental Hygiene ("DHMH"), pursuant to which United Maryland

agrees to provide and administer health care services to Medical Assistance recipients in Maryland in exchange for a monthly payment from DHMH per member enrolled in United Maryland's plan. According to DHMH's website, "HealthChoice is the name of the Maryland's statewide mandatory managed care program" that provides health care to most Medicaid participants. According to its website, United Maryland "works with the State of Maryland to provide high-quality health care coverage to limited-income families, pregnant women and children that are eligible for the program" and provides "health coverage to beneficiaries of Maryland's HealthChoice program in all counties of the state." Medical Assistance and CHIP beneficiaries covered by United are referred to as "members" of United.

### **Jurisdiction and Venue**

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and is between citizens of different states.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) in that a substantial part of the claims and causes of action alleged herein arose in this District.

### **Factual Background**

#### **Nemours' Contract with United Maryland**

10. Effective February 2, 2004, Nemours and United Maryland entered into a Settlement Agreement whereby United Maryland agreed to reimburse Nemours a specified percentage of billed charges (*i.e.*, list prices) for services that the Hospital and Nemours Pediatrics would provide to United Maryland's members in the future. The Settlement Agreement, as to United Maryland, terminated on September 30, 2013.

11. As the specific terms (in particular, the specific payment rates) of the Settlement Agreement are commercially sensitive and confidential, the Settlement Agreement is not attached to this Complaint.

**United Maryland Breaches Its Agreement With Nemours**

12. Nemours has provided various hospital, in-patient, out-patient, physician, and related medical services to United Maryland's members.

13. United Maryland authorized and approved Nemours to provide these medical services to United Maryland's members before Nemours performed them and/or these services are required to be covered by the Maryland Medicaid and CHIP programs without authorization (such as emergency care services).

14. These various medical services are covered services under the Maryland Medical Assistance and CHIP programs and are thus subject to reimbursement under the Settlement Agreement.

15. United Maryland has failed to pay Nemours in full in accordance with the Settlement Agreement for these covered medical services provided to United Maryland's members.

16. For claims of reimbursement with dates of service from January 1, 2010 to September 30, 2013, the total amount of these underpayments exceed four hundred thousand dollars (\$400,000).

**Count I (Breach of Contract)**

17. Nemours repeats and realleges each of the allegations contained in paragraphs 1 through 16 of the Complaint, and incorporates them by reference as if separately set forth herein.

18. Nemours, on the one hand, and United Maryland, on the other hand, entered into a legally binding written agreement whereby United Maryland agreed to reimburse Nemours at agreed-upon rates for services provided to its members by the Hospital and Nemours Pediatrics.

19. The Hospital and Nemours Pediatrics provided services to members of United Maryland, and such services are covered by the Maryland Medical Assistance and CHIP programs.

20. United Maryland has failed to fully reimburse Nemours for these services in accordance with the Settlement Agreement.

21. United Maryland currently owes Nemours an amount in excess of \$400,000.00 for these unpaid or underpaid health care services.

22. Additionally, as set forth in Section 10(a) of the Settlement Agreement, Nemours is entitled to accrued interest on its outstanding balance “pursuant to the appropriate state prompt pay law or regulation.” Under the Maryland Prompt Pay Law, Maryland Insurance Code Ann. § 15-1005(f)(1), an insurer, nonprofit health service plan, or health maintenance organization that fails to pay in full a clean claim for reimbursement must pay interest on the

amount of the claim that remains unpaid thirty (30) days after its initial receipt of the claim at certain specified monthly rates of interest.

23. Nemours has submitted clean claims to United Maryland, which United Maryland has received but has failed to reimburse Nemours in full for within the applicable time period. Accordingly, United Maryland owes Nemours, on these tardily and unpaid cleans with dates of service from January 1, 2010 to September 30, 2013, statutory interest at the monthly rate of 1.5% from the 31st day through the 60th day that the claims remain unpaid; thereafter, 2% from the 61st day through the 120th day; and 2.5% per month after the 120th day.

24. Under Section 10(b) of the Settlement Agreement, Nemours is also entitled to “reasonable attorneys’ fees and costs in the event that Nemours commences suit and prevails on its litigation claims” in this matter.

25. Pursuant to Fed. R. Civ. P. 38, Nemours hereby demands a trial by jury of all issues so triable.

WHEREFORE, plaintiff The Nemours Foundation asks this Court for the following relief:

1. An award of damages in an amount in excess of \$400,000.00, plus applicable prejudgment interest;
2. Interest under the Maryland Prompt Payment Act;
3. Reasonable attorneys' fees and costs; and
4. Any such other and further relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Joanna J. Cline

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\*Pro Hac Vice Motions to be filed

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